CF0000057609

APPEAL OF PRISONER

No. 2330 Name [illegible]

Father's Name [illegible] Residence [illegible]

Age [illegible] Sentenced to [illegible]

on 24/1/89 Under section 302, 34 I.P.C. by [illegible]

S.T.N. @ 309/87 @ 310/87

It is explaine d to the prisoner that if he states or wishes to be represent ed by a legal practitioner the Appelate Court wi ll not proce ed with the base for seven days unless the legal practitioner appears. If the legal pra-ctitioner does not appear with in seven days he may be heard at all if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement : 24/1/89
2. Date of which copy received : 24/1/89
3. Date on which Appeal sent : 31/1/89
4. Whether the prisoner wished to be represented or not : Yes / ~~No~~

No. 2330 Name [illegible]

Continued in 26-6-87 to 23-1-89 Jail JAGNAIPUR

No. 907/ dated 31/1/89

Forwarded to the CHIEF JUDICIAL MAGISTRATE JAGNAIPUR

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

Superintendent-~~Central~~/Distt./ ~~Sub~~ Jail JAIL

Date of receipt in C.J.M.'s Office 2/2/89

Date of receipt of record to accompany Memo of Appeal of the Appeliate Court

No. 4/89 Dated 6/2/89

Forwarded to the Sessions Judge Bengaluru

C.J.Magistrate .....

.....

Date of receipt in Appliate court _____

A.F.R

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.292 of 1989

Hemla Lakkhu alias Lakhmu

-Versus-

State of Chhattisgarh

J U D G M E N T

For consideration

Sd/-
Dilip Raosaheb Deshmukh
Judge

Hon'ble Shri Justice Fakhruddin

2 agv

Sd/-
Fakhruddin
Judge

Post for 17.06.2005

Sd/- HE
17.06.2005

(20)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.292 of 1989

Hemla Lakkhu alias Lakhmu

-Versus-

State of Chhattisgarh

CORAM: HON'BLE SHRI FAKHRUDDIN,
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ

Appellant by Smt. Kiran Singh, Advocate.
State by Shri Ashish Shukla, Govt. Advocate

J U D G M E N T

Per Dilip R. Deshmukh, J.

Heard learned counsel on merit.

2. Having been convicted under Section 302 I.P.C. by Shri N.P.Mehar, Sessions Judge, Bastar at Jagdalpur in S.T.No.309/1987 and S.T.No.310/1987 for committing murder of Lachhindhar by means of an axe and under Section 304 Part I I.P.C. for committing culpable homicide not amounting to murder by causing death of Parvati Bai by means of the handle of an axe on 25.06.1987 at village Kithiyapara Gangalur, P.S. Beejapur, Dist. Bastar and sentenced to life imprisonment under Section 302 I.P.C. and further sentenced to rigorous imprisonment for five years under Section 304 Part-I I.P.C. (both sentences to run concurrently), the accused-appellant has preferred this appeal.

3. It is not disputed that deceased Parvati Bai was wife of deceased Lachhindhar and Saligram (P.W.1) is the brother of deceased Parvati Bai.

4. Briefly stated the prosecution story is that on 25.06.1987 Parvati Bai had gone to the house of her brother Saligram P.W.1 for grinding *Dal*. Her husband deceased Lachhindhar also went there. The accused arrived after sometime and demanded the cock from Lachhindhar. Lachhindar said he had only one fighter cock. Accused went home and came with an axe and persisted in his demand. While Lachhindhar and his wife Parvati Bai were being taken by the accused-appellant towards their house, accused dealt a fatal blow by Tangia on the neck of Lachhindhar causing an incised wound on left side of neck admeasuring 3" x 2 ½" x 2" just above the left clavicle with margins clear cut and with left Carotid Artery cut of. Lachhindhar died on the spot. Parvati Bai complained as to why the accused had killed her husband. The accused said that he would also silence her and assaulted her with the blunt side of the Tangia on the nose, which fell her down. The accused again dealt two Tangia blows on the skull of Parvati Bai. Parvati Bai succumbed to the head injury on 27.6.1987. Saligram P.W.1 saw the entire incident from his house and Shanti Bai P.W.2 witnessed the incident from a nearby house. Dr. A. R. Gota P.W.5 who conducted the post-mortem on Parvati Bai found one bruise over left temporal parietal region just above the right ear placed vertically admeasuring ½" x ¾" and bruise over left temporal parietal region posterior and above to the left ear admeasuring 1¾" x ¾", incised bruise over tip of nose admeasuring ½" x ½" with

bleeding present. He opined that the death was homicidal due to head injury, which was ante mortem in nature.

5. First Information Report was lodged by Saligram P.W.1 at P.S. Beejapur at 7.30 P.M. on the date of occurrence i.e. 25.6.1989. Post-Mortem on the dead body of Lachhindhar was conducted by Dr. A.R. Gota P.W. 5 who found by report Ex. P-8 that the death of Lachhindhar was due to syncope as a result of hemorrhage through the left Carotid artery, which was cut. He found that the injury was ante mortem and death was homicidal in nature.

6. After investigation two separate session trials i.e. S.T.No.309/1987 relating to death of Lachhindhar and S.T.No.310/1987 relating to death of Parvati Bai were held.

7. Charges were framed by the learned Sessions Judge. The accused abjured his guilt but did not lead any evidence.

8. The trial Court relied upon the testimony of ocular witnesses P.W.1 Saligram and P.W.2 Shanti Bai and also the testimony of P.W.5 Dr. A.R. Gota and convicted & sentenced the appellant for committing murder of Lachhindhar and culpable homicide not amounting to murder as regards Parvati Bai as shown in para 1 (supra).

9. The only contention of learned counsel for the appellant is that P.W.1 is the brother of deceased Parvati Bai, an interested witness and therefore could not be relied on. Learned counsel next contended that both the witnesses P.W.1 Saligram and P.W.2 Shanti Bai could not have seen the incident as they were at a distance from the place of occurrence. Learned counsel, however,

did not dispute that death of Lacchindhar and Parvati Bai was homicidal in nature.

10. On the other hand, learned Govt. Advocate contended that the testimony of Saligram and Shanti Bai was un-rebutted in cross-examination and trustworthy, their presence near the scene of occurrence was natural and was rightly relied on by the trial Court. He further contended that the testimony of Saligram P.W.1 could not be discarded merely on the ground that he was the brother of deceased Parvati Bai.

11. We have gone through the impugned judgment. We have also perused the record of S.T.No.309/1987 and S.T.No.310/1987. We have also given our thoughtful consideration to the arguments advanced and have also minutely perused the testimony of Saligram P.W.1 and Shanti Bai P.W.2. Parvati Bai just before the incident had gone to the house of Saligram to grind *Dal.* The incident had occurred soon after a hot discussion by the appellant when Lachhindhar refused to deliver his fighter cock to the appellant. The evidence of Saligram P.W.1 also shows that the appellant then came with an axe from his house and holding the hands of Lachhindhar, started going towards his house. Parvati Bai followed them. The witness further narrated that about 40 steps from his house, the accused-appellant suddenly assaulted Lacchindhar by the axe on the neck, which fell Lachhindhar down. He further narrated that upon objection by his sister Parvati Bai, the accused in order to silence her dealt another Tangia blow on the nose of Parvati Bai, which also fell her on the ground. The accused dealt two more Tangia blows on the head of Parvati Bai.

All the three blows on Parvati Bai were dealt from the blunt side of Tangia. The presence of this witness near the scene of occurrence is thus natural. In cross-examination, there is nothing to indicate that he bears any grudge against the appellant to falsely implicate him. Nothing in his cross-examination has been elicited, which would rebut his testimony.

12. The second witness is Shanti Bai P.W.2 who lives in a nearby house. She also deposed that while the deceased couple Lachhindhar and Parvati Bai were going towards their house, the accused came from behind and dealt a Tangia blow on the neck of Lachhindhar and upon objection by Parvatibai, he dealt Tangia blow from the blunt side on the nose of Parvati Bai and seeing all this, she got frightened and ran towards the river. Learned counsel for the appellant has also not been able to create any dent in the testimony of Shanti Bai during the course of arguments. Saligram P.W.1 and Shanti Bai P.W.2 fully corroborate each other and bring home the guilt of the appellant. These witnesses had the opportunity to see the occurrence and their presence at the scene of occurrence has been proved. It is settled law that the testimony of a witness cannot be discarded merely on the ground that the witness is a relative if it has stood the test of cross-examination and inspires confidence. In the instant case, the presence of Saligram P.W.1 and Shanti Bai P.W.2 near the scene of occurrence is natural, their testimony inspires confidence as it has stood the test of cross-examination. The learned trial Court has dealt with their testimony in paragraphs 7 to 11. We have gone through the testimony of P.W.1 Saligram and P.W.2 Shanti Bai and found that

the trial Court has rightly placed reliance upon it for bringing home the guilt of the appellant.

13. Smt. Singh learned counsel for the appellant next contended that since the entire incident took place in continuity and since the learned trial Judge has held the appellant guilty only for offence punishable under Section 304 Part I of I.P.C. in S.T.No.310/1987 so far as the death of Parvati Bai is concerned, the trial Court ought to have convicted the appellant under Section 304 Part I I.P.C. for committing culpable homicide not amounting to murder of Lachhindhar. She thus contended that the offence so far as the death of Lachhindhar is concerned, would at the most fall under Section 304 Part I and not under Section 302 I.P.C.

14. On the other hand, learned Govt. Advocate contended that murder of Lachhindhar was committed in cold blood with full deliberation since the accused had dealt a fatal blow from the sharp side of Tangia on the neck of the Lachhindhar killing him instantaneously on the spot.

15. We have considered the rival submissions. Death of Lachhindhar was caused by the accused in cold blood and the Tangia blow was inflicted on the neck of Lachhindhar which instantaneously killed him. Thus there is no doubt that the offence so far as it relates to the deceased Lachhindhar falls squarely under Section 302 of the I.P.C. So far as the death of Parvati Bai is concerned, there was no sudden or grave provocation. Immediately after killing Lachhindhar with a fatal Tangia blow, the accused inflicted as many as three blows, though from the blunt side of the Tangia, on the head of

Parvati Bai to silence her, Parvati Bai succumbed to the injuries on 27.6.1987. The medical opinion of Dr. A.R.Gota P.W.5 shows that death of Parvati Bai was homicidal due to ante mortem head injuries sustained by her. The entire incident took place at the same time and with the same intention of causing death or such bodily injury as was likely to cause death. Therefore, while we reject the contention of the learned defence counsel, we are unable to subscribe to the view of the trial Court that the act of the accused-appellant in causing the death of Parvati Bai fell under Section 304 Part I of the I.P.C. The guilt of the appellant under Section 302 of I.P.C. for committing murder of Parvati Bai was clearly brought home by the prosecution. However, since the sentences awarded by the trial Court were to run concurrently and the learned Govt. Advocate has contended that the appellant has already been released on 15.08.2001 from Jagdalpur jail after undergoing sentence of life imprisonment and also since the State has not preferred any appeal against the acquittal of the appellant under Section 302 of I.P.C. for the offence of committing murder of Parvati Bai, we would not dwell any further on the point.

15. In the result, the appeal fails and is accordingly dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani